

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. MARTIN, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MEREDITH CORPORATION, MEREDITH
HOLDINGS CORPORATION,
IAC/INTERACTIVECORP, DOTDASH MEDIA,
INC., and DOTDASH MEREDITH, INC.,

Defendants.

Civ. Action No. 22-cv-4776-DLC

**PLAINTIFF WILLIAM J. MARTIN'S NOTICE OF SUPPLEMENTAL AUTHORITY IN
SUPPORT OF HIS OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Plaintiff William J. Martin respectfully requests that the Court consider *Czarnionka v. Epoch Times Ass'n, Inc.*, No. 22 CIV.6348 (AKH), 2022 WL 17718689 (S.D.N.Y. Dec. 15, 2022) ("*Czarnionka II*") as supplemental authority in opposition to Defendants' motion to dismiss Plaintiff's Video Privacy Protection Act ("VPPA") claim for Defendants' use of the Facebook Pixel on People.com and PeopleTV.com. ECF Nos. 36-39. A copy of the decision is attached as Exhibit A for the Court's convenience. *Czarnionka II* was decided after Defendants in this action submitted their reply brief on the motion to dismiss, ECF No. 55, and directly rejects many of the same arguments Defendants' raise for the first time in their reply brief.¹

¹ Plaintiff filed his opposition to Defendants' motion to dismiss in late October 2022. ECF No. 45. A couple weeks later, *Czarnionka I* was decided, and Plaintiff filed a notice of supplemental authority. ECF Nos. 52 (notice), 52-1 (copy of decision). At the end of November 2022, Defendants filed their reply brief, attempting to distinguish *Czarnionka I*. ECF No. 55. Then, in mid-December 2022, *Czarnionka II* was decided.

Czarnionka II refused to certify an interlocutory appeal of *Czarnionka I*, which denied a motion to dismiss a VPPA class action for a website using Facebook Pixel because it held that the disclosure of a Facebook ID was personally identifiable information (“PII”). In their reply brief, Defendants urged the Court to “reject” *Czarnionka I* by mischaracterizing the decision as being “at odds with the ‘ordinary person’ test [for PII] adopted by the majority of circuits.” ECF No. 55 at 10. *Czarnionka II* held that “[e]ven if this Court were to explicitly adopt the ‘ordinary person’ standard, I still would have held that the Complaint sufficiently alleged the disclosure of PII under the VPPA. The Facebook ID disclosed by Epoch Times is sufficient for an ordinary person to identify Plaintiff and similarly situated individuals by simply typing ‘facebook.com/[Facebook ID]’ into a web browser.” 2022 WL 17718689, at *1; *accord* Opp. to Mot., ECF No. 45, at 7 (“The Facebook ID... allows anyone to look up a person’s Facebook profile... by typing into their web browser www.facebook.com/[Facebook ID].”) *Czarnionka II* also distinguished the same cases involving anonymized device numbers that Defendants in this case rely on in their motion to dismiss, *see* ECF No. 37, at 20, by noting that “the Facebook ID, unlike anonymized device serial numbers, ‘itself represents a particular individual.’” *Id.*; *accord* Opp. to Mot., ECF No. 45, at 14.²

² Also attached as Exhibit B is a copy of *Belozarov v. Gannett Co.*, No. CV 22-10838-NMG, 2022 WL 17832185 (D. Mass. Dec. 20, 2022), which also recently denied a motion to dismiss a VPPA class action for a website using the Facebook Pixel. *Belozarov* is consistent with *Czarnionka I* and *II*, and similarly rejects many of the same VPPA arguments Defendants in this action raise in their opening and reply briefs.

Dated: Los Angeles, California
February 15, 2023

Respectfully submitted,

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